

PRELIMINARY DRAFT
For Discussion Purposes Only
Jan. 10, 2012

BDCP is starting to release pre-administrative drafts of various chapters of the BDCP EIR/S. The Council is a responsible agency and will provide comments as appropriate; the Delta Independent Science Board must review the draft EIR and provide its comments to the Council and the Department of Fish and Game. This Council has retained the consulting firm ARCADIS to assist with the required assessment, but we need to provide guidance that will focus the review. The attached memo from Department of Justice Attorney Tara Mueller provides excellent foundation. The following is an attempt to outline what needs to be done for the Council and for the Science Board, based upon that memo and the Delta Reform Act.

1. Council (as responsible agency).

- Per CEQA rules, Council may submit comments on draft EIR regarding those activities involved in BDCP that are within an area of the Council's expertise, that are required to be carried out or approved by the Council, or that are otherwise germane to the Council's statutory responsibility.
- Because WC sec. 85320(b)(2), requires Council to find that the BDCP EIR "complies" with CEQA (for purposes of inclusion in the Delta Plan), the Council may make wide-ranging comments regarding the adequacy of the draft and final EIR under CEQA; however, comments must be supported by specific documentation, and should focus on shortcomings or on additional alternatives or mitigation measures (with performance objectives or appropriate reference documents)
- Because WC secs. 85320(b)(2)(A)-(G) further require that the BDCP EIR include specified analyses as part of its CEQA compliance, the Council's comments should focus on (but not necessarily be limited to) the adequacy of those specified analyses. In particular, whether the EIR includes a "comprehensive review and analysis" of :
 - a. a reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval under NCCPA, and other operation requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.
 - b. a reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design option of a lined canal, an unlined canal, and pipelines.
 - c. the potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities consider in the EIR.
 - d. the potential effects on migratory fish and aquatic resources.
 - e. the potential effects on Sacramento and San Joaquin River flood management.

PRELIMINARY DRAFT
For Discussion Purposes Only
Jan. 10, 2012

- f. the resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.
- g. the potential effects of each Delta conveyance alternative on Delta water quality.

2. Independent Science Board.

- WC sec. 85320(c) requires the Board to review the draft EIR and submit comments to the Council and DFG (ie, not as a responsible agency to DWR).
- WC sec. 85280(a)(3) requires the Board, generally, to provide oversight of scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs.
- Consequently--although not limited by "responsible agency" role-- Board comments on environmental analysis or shortcomings with a nexus to adaptive management would clearly be germane to the Board's general statutory responsibility.
- In addition, because the Board is required to submit comments to the Council (and not DWR), its comments—if the duration of the public comment period permits-- could/should inform the Council's comments as a responsible agency. In this regard, the Board could add scientific basis, especially with regard to the Council's comments on a, c, d, and g above.

ATTACHMENT: Memo from Tara L. Mueller re: The Delta Stewardship Council's "Responsible Agency" Role Regarding the Bay Delta Conservation Plan